

CHAPTER 28-21

EXECUTION OF THE JUDGMENT

28-21-01. Execution at any time within ten years. The party in whose favor judgment has been given, and in case of the party's death, the party's personal representatives duly appointed, at any time within ten years after the entry of judgment, may proceed to enforce the same by execution as provided in this chapter.

28-21-02. Stay of execution but not of judgment. Superseded by N.D.R.Civ.P., Rule 62.

28-21-03. Two kinds of execution. There shall be two kinds of execution, one against the property of the judgment debtor, and another for the delivery of the possession of real or personal property or for such delivery with damages for withholding the same.

28-21-04. Special executions. When a judgment requires the payment of money or the delivery of real or personal property, the judgment may be enforced in those respects by execution as provided in this chapter. When the judgment requires the sale of property, the judgment may be enforced by a writ reciting such judgment, or the material parts of the judgment, and directing the proper officer to execute the judgment by making the sale and applying the proceeds in conformity with the judgment. When it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or the person or officer who is required by the judgment or by law to obey the same, and the party's, person's, or officer's obedience thereto enforced. If the party, person, or officer refuses, the party, person, or officer may be punished by the court as for contempt.

28-21-04.1. Summary execution on moneys retained pursuant to garnishment. When a judgment creditor proposes to execute on moneys owed to the judgment debtor by a third party who is retaining the money pursuant to garnishment, the execution must be made between twenty and three hundred sixty days after service of the garnishment summons. The execution may be served by the attorney for the judgment creditor or a sheriff, or an agent of either, through certified mail or personal service to the third party. The execution may be directed to the sheriff of any county. A transcript of the judgment need not be filed in the county of the sheriff to whom the execution is directed. Upon receipt, the third party shall remit the amount due under the garnishment to the sheriff or the attorney who shall proceed in all other respects like the sheriff making a similar execution. If the judgment debtor files a claim of exemptions under section 32-09.1-22 on or before twenty days after service of the garnishment summons, no execution may be made against moneys claimed as exempt and retained pursuant to the garnishment summons until the court determines that the moneys being garnished are not exempt.

28-21-05. Execution issued to sheriff of counties where judgment docketed. When the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county where the judgment is docketed. When it requires the delivery of real or personal property, it may be issued to the sheriff of any county where the property or some part thereof is situated. An execution must be issued from the court of the county which entered the judgment, though more than one execution may be issued at the same time to different counties. Real property adjudged to be sold must be sold in the county where it lies by the sheriff of that county, or by a referee appointed by the court for that purpose, and thereupon the sheriff or referee must execute a certificate of sale to the purchaser as hereinafter provided. If the sheriff of the county to which the execution may be issued was a party in the action which resulted in the judgment or has an interest in any of the property against which the execution may be applied, the execution may be issued to the coroner of that county, and the coroner shall have the same power and authority to enforce the judgment by execution as provided to the sheriff in this chapter.

28-21-05.1. Levy with certified copy of judgment. A sheriff may levy upon a person's personal property upon receipt of a certified copy of judgment against the person, which has been docketed in any county, and proper notice has been given to the debtor requiring payment

of money or the delivery of personal property. The party in whose favor the judgment was entered may proceed to enforce the judgment by execution as provided in this chapter.

28-21-05.2. Department of human services may issue executions for child support arrearages.

1. Notwithstanding section 28-21-05, if the judgment debtor is listed on the arrears registry as defined in section 14-09-09.10, or if the judgment debtor meets criteria established by the secretary of the United States department of health and human services that apply when a financial institution is doing business in two or more states, the department of human services may issue an execution, against the property of the judgment debtor, to the sheriff of any county in which the property may be found.
2. A writ of execution issued by the department of human services must be issued as provided in section 28-21-06, except the past-due support need not be docketed and the writ may be issued in a form prescribed by the department of human services. A writ issued under this section must be accompanied by a copy of the payment records maintained under section 50-09-02.1 which has been certified under section 14-08.1-08.
3. A writ issued by the department of human services is returnable to the department.

28-21-06. Issuance and contents of execution. The writ of execution must be issued in the name of the state of North Dakota, attested in the name of the judge of the court that entered the judgment, sealed with the seal of the court, subscribed by the clerk of that court, and directed and delivered to a sheriff as provided in section 28-21-05. It must refer intelligibly to the judgment, stating the date and time the judgment was filed with the clerk, the courts and counties to which the judgment has been transcribed, the names of the parties, the last-known address of the judgment debtor, the approximate age of the judgment debtor, and the date of birth of the judgment debtor if known. If the execution is against the property of a judgment debtor, the execution must also state the amount of money the judgment ordered the debtor to pay to the judgment creditor, the date and time the judgment was docketed by the clerk, the rate of interest to be used in calculating interest due on the judgment pursuant to section 28-20-34, the amount of the costs accruing on the judgment as of the date of issuance of the execution, and if the execution is being issued to a sheriff of a county other than that of the county of the issuing writ, the date and time the judgment was docketed in the county of the sheriff to whom the execution is being issued. If the execution is for the delivery of the possession of real or personal property, the execution must also particularly describe the property to be delivered, specify the value of the property, identify the party entitled to possession of the property, and, if the same judgment orders the party against whom the judgment was rendered to pay any costs, damages, or rents or profits to the party entitled to possession of the property, list the amounts of the costs, damages, or rents or profits payable as of the date of issuance of the execution. Upon receipt of an execution, the sheriff shall:

1. If the execution is against the property of the judgment debtor, satisfy the judgment with interest and accruing costs, which include sheriff and county costs, out of the personal property of the debtor, and, if sufficient personal property cannot be found, out of the real property belonging to the debtor on the day when the judgment was docketed in the county or at any time thereafter. If real or personal property of the debtor is in the hands of a personal representative, heir, devisee, legatee, tenant of real property, or trustee, the sheriff may satisfy the judgment out of that property; or
2. If the execution is for the delivery of the possession of real or personal property, deliver the possession of the property to the party entitled thereto, and satisfy any costs, damages, or rents or profits recovered by the same judgment out of the personal property of the party against whom it was rendered and, if sufficient personal property cannot be found, out of the real property belonging to the party on the day when the judgment was docketed in the county or at any time thereafter. If

delivery of the property cannot be had, the sheriff may satisfy the judgment in the amount of the value of the property out of the real and personal property of the party as if an execution against the property of the party had been issued.

28-21-07. Time of return. The execution is returnable to the clerk with whom the record of the judgment is filed within sixty days after its receipt by the officer and, except when a sheriff's levy has been made within the sixty days, the execution is returnable to the clerk within a reasonable time following the completion of the sale of the property or ninety days after its receipt by the officer. If a levy has been made and the issue of ownership of the property or interest therein is raised by any party, or if the issue whether the property is exempt under chapter 28-22 is raised by either party, the court having jurisdiction may extend, for good cause shown, the execution for a reasonable time to accommodate due notice and hearing to determine these issues and to provide time for the publication of notice of sale and sale of the property subject to execution.

28-21-08. Property subject to levy - Manner of levy. All goods, chattels, moneys, and other property, both real and personal, or any interest therein, of the judgment debtor not exempt by law, and all property and rights of property seized and held under attachment in the action are subject to execution. Shares and interests in any corporation or company, and debts and credits, and all other property, both real and personal, and any interest in real or personal property, and all other property not capable of manual delivery, may be taken on execution and sold as provided in this chapter. The levy under an execution must be made as follows:

1. Upon real property, the sheriff shall file with the recorder of the county in which the property is located a notice of levy that has been signed by the sheriff and which states the names of the parties to the action and a description of the property.
2. On personal property capable of manual delivery, the sheriff shall take the property into custody. When taking the property, the sheriff shall deliver a copy of the execution and notice of levy to the person from whom the property was taken.
3. Upon money, judgments, drafts, promissory notes, or other papers of like character, by serving a copy of the execution and levy to the person who has custody of such property, except as may be provided for in chapter 32-09.1.
4. On other personal property, the sheriff shall leave a copy of the execution and a notice of levy under an execution with the person holding the property or:
 - a. If the property consists of a right or share in the stock of a corporation or interest or profits thereon, with the president or other head of the corporation, or the secretary, cashier, or managing agent thereof.
 - b. If the property consists of membership interests in a limited liability company or interest or profits thereon, with the president or other head of the limited liability company or the secretary, treasurer, or managing agent thereof.

The sheriff may elect not to seize property during the time period the debtor has to claim exemptions under chapter 28-22 or in the case of property which by reason of its bulk or other cause cannot be removed immediately and upon service of the notice of levy in accordance with this section and section 28-21-12, the levy is as valid and effectual as if the property had been seized and the possession and control thereof retained by the officer. The lien of the writ of execution is effectual from the time the actual levy is made in accordance with this section and section 28-21-12.

28-21-09. Pledged or mortgaged property may be levied on. When property is pledged or mortgaged or is subject to a lien for the payment of money or the performance of any obligation, the right and interest of the execution debtor therein may be sold on execution without taking possession of or removing the property to the place of sale, but the entire right and interest of such debtor in all the property separately pledged or covered by each separate mortgage or

lien must be sold together as a distinct parcel or thing, and the purchaser at such sale shall acquire all the right and interest of such debtor therein.

28-21-10. Officer's proceedings on execution. When an execution is delivered to any officer, the officer shall endorse on the execution the day and hour when the officer received it and shall proceed to execute the execution with diligence. If executed, an exact description of the property sold at length with the date of the levy, sale, or other act done by virtue of the execution, including all costs incurred, must be endorsed upon or appended to the execution. If the writ was not executed, it must be returned wholly unsatisfied with all costs incurred endorsed upon or appended to the execution. If the writ was executed in part only, the reason along with all costs in such case must be stated in the return.

28-21-11. Levy and sale. The officer shall execute the writ by levying on the property of the judgment debtor, or by selling the same, selling the other property, and paying to the judgment creditor the proceeds, or so much thereof as will satisfy the execution.

28-21-12. Notice of levy - Service - Contents. In all cases of levy upon personal property, the sheriff or other officer must serve the notice of levy in the same manner as a summons is served in accordance with the North Dakota Rules of Civil Procedure. Such notice must have written or printed upon its face the further notice to the debtor, that if exemptions are claimed or demanded, such claim must be made within ten days after service of notice.

28-21-12.1. Property delivery - Penalty. Any person who has received notice of levy in accordance with this chapter and fails to surrender and deliver the property levied on under section 28-21-08 upon demand of the sheriff is guilty of a class B misdemeanor and may be guilty of contempt of court.

28-21-13. Amount levied - When lien on personalty. The officer in all cases shall select such property and in such quantities as will be likely to bring the exact amount required to be raised as nearly as practicable, and having made one levy, at any time thereafter may make other levies if the officer deems it necessary. No writ of execution is a lien on personal property before the actual levy thereof.

28-21-13.1. Levy when more than one execution is outstanding. If more than one execution against a judgment debtor is outstanding when a levy upon property of a judgment debtor is made, the property must be applied to the execution first received by the sheriff. The balance, if any, of the property must be applied to subsequent executions in order of time as received by the sheriff. However, property of the judgment debtor which was not previously levied upon but which is subject to levy and which is particularly described either in the execution or in a written notice to the sheriff by the judgment creditor or the creditor's agent or attorney must be applied to that execution regardless of time of receipt of the execution by the sheriff.

28-21-14. What need not be sold. Money levied on may be appropriated without being advertised or sold. The same may be done with judgments, drafts, promissory notes, or other papers of like character, if the judgment creditor will receive them at their par value as cash or if the officer can exchange them for cash at that value, and an assignment thereof by the officer shall have the same effect as if made by the execution debtor.

28-21-15. Payment to sheriff by debtor's debtor. After the issuing of execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of that person's debt, or so much thereof as is necessary to satisfy the execution, and the sheriff's receipt is a sufficient discharge for the amount so paid.

28-21-16. Claim by third person - Sheriff's jury. Repealed by S.L. 1985, ch. 347, § 9.

28-21-17. Execution against principal first. In all cases when judgment is rendered upon any instrument in writing in which two or more persons are severally bound, and it appears to the court by parol or other testimony that one or more of said persons so bound signed the same as surety or bail for that person's codefendant, the court in entering judgment thereon shall

state which of the defendants is principal debtor and which is surety or bail. Execution issued on such judgment must command the sheriff or other officer to cause the money to be made of the personal property and real property of the principal debtor, but for want of sufficient property of the principal debtor to make the same to cause the same to be made of the personal and real property of the surety or bail. In all cases the property, both personal and real, of the principal debtor within the jurisdiction of the court must be exhausted before any of the property of the surety or bail may be taken in execution.

28-21-18. Return of writ by mail. When execution is issued in any county and directed and delivered to the sheriff or coroner of another county, the sheriff or coroner having the execution after having discharged all the duties required by law shall mail the execution to the clerk who issued the execution. On proof by the sheriff or coroner that the execution was mailed soon enough to have reached the clerk prior to the execution's expiration, the sheriff or coroner is not liable for any penalty if the execution does not reach the office in due time.

28-21-19. Amercement of sheriff. Repealed by S.L. 1993, ch. 103, § 8.

28-21-20. Amercement of clerk. Repealed by S.L. 1993, ch. 103, § 8.

28-21-21. Measure of amercement. Repealed by S.L. 1993, ch. 103, § 8.

28-21-22. Procedure against officer. Repealed by S.L. 1993, ch. 103, § 8.

28-21-23. Surety of sheriff made party. Repealed by S.L. 1993, ch. 103, § 8.

28-21-24. Officer's reimbursement. Repealed by S.L. 1993, ch. 103, § 8.

28-21-25. Limitation on bond requirements in litigation.

1. In civil litigation under any legal theory, the supersedeas bond to be furnished to stay the execution of the judgment during the entire course of appellate review must be set in accordance with applicable laws or court rules, except that the total supersedeas bond that is required of all appellants collectively may not exceed twenty-five million dollars, regardless of the amount of the judgment.
2. Notwithstanding subsection 1, if an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid payment of a judgment, a court may require the appellant to post a supersedeas bond in an amount up to the total amount of the judgment.